

Protecting wrecks of warships in the Belgian Part of the North Sea: the national and international legal framework on 'maritime war graves'

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In the night of 29–30 May 1940 the British warship the HMS Wakeful was sailing in the Belgian sea when it was spotted by the German E-boat S-30. The E-boat fired two torpedoes causing the HMS Wakeful to break in half. The British warship sank within 15 seconds together with 700 of its crewmembers that were still on board. Until this day the wreck of the HMS Wakeful remains their final resting place.

The HMS Wakeful is just one of many warships that sunk during wartime, taking a part of its crew down with it. These are the so-called 'maritime war graves' and can be found in oceans all over the world. In the Belgian part of the North Sea alone we know of 80 maritime war graves having 8 different nationalities. Years ago states started to regulate the protection of underwater cultural heritage, including of course shipwrecks, at an international level. The protection of warships has proven to be a very difficult aspect in this matter, and especially the legal protection of maritime war graves has been lagging behind. Nevertheless protecting the remains of their servicemen that died in battle is a concern of many states. Therefore the question rises in what way and to what extent maritime war graves are being protected under international and national legislation.

During the negotiations on the 2001 UNESCO Convention on the protection of underwater cultural heritage it became clear that the discussion concerning the protection of maritime war graves is rooted very deep since even no agreement could be reached on the definition of a warship. On top of this no international consensus exists on the question whether wrecks of warships enjoy the same immunity as operational warships. This is an often discussed problem in literature and was reflected during the negotiations on the UNESCO Convention where the maritime powers (e.g. UK, US, Spain) wanted to be involved when deciding on the protective regime for the wrecks of their warships, whereas the G-77 wanted to see this involvement reduced to a minimum for wrecks found in their territorial seas. Under the UNESCO Convention only mention has been made of the protection of human remains in general without any specific reference to maritime war graves. Nevertheless, during the negotiations the maritime powers were strong proponents of such an explicit reference.

In order to determine in what way maritime war graves are being protected, it is very important to have a look at state practice (e.g. the US policy not to allow the salvage of warships containing the remains of servicemen), including legislation (e.g. the UK Protection of Military Remains Act), jurisprudence and interstate agreements on the protection of maritime war graves. Comparing all of these aspects helps create an image of how maritime war graves can be protected in the Belgian part of the North Sea.

References

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